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EXECUTIVE BRANCH ADVISORY COMMITTEES

SEPTEMBER 18, 1972.—Ordered to be printed

Mr. HOLIFIELD, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany H.R. 4383]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4383) to authorize the establishment of a system governing the creation and operation of advisory committees in the executive branch of the Federal Government, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

That this Act may be cited as the "Federal Advisory Committee Act".

FINDINGS AND PURPOSES

SEC. 2. (a) The Congress finds that there are numerous committees, boards, commissions, councils, and similar groups which have been established to advise officers and agencies in the executive branch of the Federal Government and that they are frequently a useful and beneficial means of furnishing expert advice, ideas, and diverse opinions to the Federal Government.

(b) The Congress further finds and declares that—

(1) the need for many existing advisory committees has not been adequately reviewed;

(2) new advisory committees should be established only when they are determined to be essential and their number should be kept to the minimum necessary;

(3) advisory committees should be terminated when they are no longer carrying out the purposes for which they were established;

(4) standards and uniform procedures should govern the establishment, operation, administration, and duration of advisory committees;

(5) the Congress and the public should be kept informed with respect to the number, purpose, membership, activities, and cost of advisory committees; and

(6) the function of advisory committees should be advisory only, and that all matters under their consideration should be determined, in accordance with law, by the official, agency, or officer involved.

DEFINITIONS

SEC. 3. For the purpose of this Act—

(1) The term "Director" means the Director of the Office of Management and Budget.

(2) The term "advisory committee" means any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof (hereafter in this paragraph referred to as "committee"), which is—

(A) established by statute or reorganization plan, or

(B) established or utilized by the President, or

(C) established or utilized by one or more agencies,

in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government, except that such term excludes (i) the Advisory Commission on Intergovernmental Relations, (ii) the Commission on Government Procurement, and (iii) any committee which is composed wholly of full-time officers or employees of the Federal Government.

(3) The term "agency" has the same meaning as in section 551(1) of title 5, United States Code.

(4) The term "Presidential advisory committee" means an advisory committee which advises the President.

APPLICABILITY

SEC. 4. (a) The provisions of this Act or of any rule, order, or regulation promulgated under this Act shall apply to each advisory committee except to the extent that any Act of Congress establishing any such advisory committee specifically provides otherwise.

(b) Nothing in this Act shall be construed to apply to any advisory committee established or utilized by—

(1) the Central Intelligence Agency; or

(2) the Federal Reserve System.

(c) Nothing in this Act shall be construed to apply to any local civic group whose primary function is that of rendering a public service with respect to a Federal program, or any State or local committee, council, board, commission, or similar group established to advise or make recommendations to State or local officials or agencies.

RESPONSIBILITIES OF CONGRESSIONAL COMMITTEES

SEC. 5. (a) In the exercise of its legislative review function, each standing committee of the Senate and the House of Representatives shall make a continuing review of the activities of each advisory committee under its jurisdiction to determine whether such advisory committee should be abolished or merged with any other advisory committee, whether the responsi-

bilities of such advisory committee should be revised, and whether such advisory committee performs a necessary function not already being performed. Each such standing committee shall take appropriate action to obtain the enactment of legislation necessary to carry out the purpose of this subsection.

(b) In considering legislation establishing, or authorizing the establishment of any advisory committee, each standing committee of the Senate and of the House of Representatives shall determine, and report such determination to the Senate or to the House of Representatives, as the case may be, whether the functions of the proposed advisory committee are being or could be performed by one or more agencies or by an advisory committee already in existence, or by enlarging the mandate of an existing advisory committee. Any such legislation shall—

(1) contain a clearly defined purpose for the advisory committee;

(2) require the membership of the advisory committee to be fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee;

(3) contain appropriate provisions to assure that the advice and recommendations of the advisory committee will not be inappropriately influenced by the appointing authority or by any special interest, but will instead be the result of the advisory committee's independent judgment;

(4) contain provisions dealing with authorization of appropriations, the date for submission of reports (if any), the duration of the advisory committee, and the publication of reports and other materials, to the extent that the standing committee determines the provisions of section 10 of this Act to be inadequate; and

(5) contain provisions which will assure that the advisory committee will have adequate staff (either supplied by an agency or employed by it), will be provided adequate quarters, and will have funds available to meet its other necessary expenses.

(c) To the extent they are applicable, the guidelines set out in subsection (b) of this section shall be followed by the President, agency heads, or other Federal officials in creating an advisory committee.

RESPONSIBILITIES OF THE PRESIDENT

SEC. 6. (a) The President may delegate responsibility for evaluating and taking action, where appropriate, with respect to all public recommendations made to him by Presidential advisory committees.

(b) Within one year after a Presidential advisory committee has submitted a public report to the President, the President or his delegate shall make a report to the Congress stating either his proposals for action or his reasons for inaction, with respect to the recommendations contained in the public report.

(c) The President shall, not later than March 31 of each calendar year (after the year in which this Act is enacted), make an annual report to the Congress on the activities, status, and changes in the composition of advisory committees in existence during the preceding calendar year. The report shall contain the name of every advisory committee, the date of and authority for its creation, its termination date or the date it is to make a report, its functions, a reference to the reports it has submitted, a statement of whether it is an ad hoc or continuing body, the dates of its meetings, the names and occupations of its current members, and the total estimated

annual cost to the United States to fund, service, supply, and maintain such committee. Such report shall include a list of those advisory committees abolished by the President, and in the case of advisory committees established by statute, a list of those advisory committees which the President recommends be abolished together with his reasons therefor. The President shall exclude from this report any information which, in his judgment, should be withheld for reasons of national security, and he shall include in such report a statement that such information is excluded.

RESPONSIBILITIES OF THE DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET

SEC. 7. (a) The Director shall establish and maintain within the Office of Management and Budget a Committee Management Secretariat, which shall be responsible for all matters relating to advisory committees.

(b) The Director shall, immediately after the enactment of this Act, institute a comprehensive review of the activities and responsibilities of each advisory committee to determine—

- (1) whether such committee is carrying out its purpose;
- (2) whether, consistent with the provisions of applicable statutes, the responsibilities assigned to it should be revised;
- (3) whether it should be merged with other advisory committees; or
- (4) whether it should be abolished.

The Director may from time to time request such information as he deems necessary to carry out his functions under this subsection. Upon the completion of the Director's review he shall make recommendations to the President and to either the agency head or the Congress with respect to action he believes should be taken. Thereafter, the Director shall carry out a similar review annually. Agency heads shall cooperate with the Director in making the reviews required by this subsection.

(c) The Director shall prescribe administrative guidelines and management controls applicable to advisory committees, and, to the maximum extent feasible, provide advice, assistance, and guidance to advisory committees to improve their performance. In carrying out his functions under this subsection, the Director shall consider the recommendations of each agency head with respect to means of improving the performance of advisory committees whose duties are related to such agency.

(d)(1) The Director, after study and consultation with the Civil Service Commission, shall establish guidelines with respect to uniform fair rates of pay for comparable services of members, staffs, and consultants of advisory committees in a manner which gives appropriate recognition to the responsibilities and qualifications required and other relevant factors. Such regulations shall provide that—

(A) no member of any advisory committee or of the staff of any advisory committee shall receive compensation at a rate in excess of the rate specified for GS-18 of the General Schedule under section 5332 of title 5, United States Code; and

(B) such members, while engaged in the performance of their duties away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons employed intermittently in the Government service.

(2) Nothing in this subsection shall prevent—

(A) an individual who (without regard to his service with an advisory committee) is a full-time employee of the United States, or

(B) an individual who immediately before his service with an advisory committee was such an employee, from receiving compensation at the rate at which he otherwise would be compensated (or was compensated) as a full-time employee of the United States.

(e) The Director shall include in budget recommendations a summary of the amounts he deems necessary for the expenses of advisory committees, including the expenses for publication of reports where appropriate.

RESPONSIBILITIES OF AGENCY HEADS

SEC. 8. (a) Each agency head shall establish uniform administrative guidelines and management controls for advisory committees established by that agency, which shall be consistent with directives of the Director under section 7 and section 10. Each agency shall maintain systematic information on the nature, functions, and operations of each advisory committee within its jurisdiction.

(b) The head of each agency which has an advisory committee shall designate an Advisory Committee Management Officer who shall—

(1) exercise control and supervision over the establishment, procedures, and accomplishments of advisory committees established by that agency;

(2) assemble and maintain the reports, records, and other papers of any such committee during its existence; and

(3) carry out, on behalf of that agency, the provisions of section 552 of title 5, United States Code, with respect to such reports, records, and other papers.

ESTABLISHMENT AND PURPOSE OF ADVISORY COMMITTEES

SEC. 9. (a) No advisory committee shall be established unless such establishment is—

(1) specifically authorized by statute or by the President; or

(2) determined as a matter of formal record, by the head of the agency involved after consultation with the Director, with timely notice published in the Federal Register, to be in the public interest in connection with the performance of duties imposed on that agency by law.

(b) Unless otherwise specifically provided by statute or Presidential directive, advisory committees shall be utilized solely for advisory functions. Determinations of action to be taken and policy to be expressed with respect to matters upon which an advisory committee reports or makes recommendations shall be made solely by the President or an officer of the Federal Government.

(c) No advisory committee shall meet or take any action until an advisory committee charter has been filed with (1) the Director, in the case of Presidential advisory committees, or (2) with the head of the agency to whom any advisory committee reports and with the standing committees of the Senate and of the House of Representatives having legislative jurisdiction of such agency. Such charter shall contain the following information:

(A) the committee's official designation;

(B) the committee's objectives and the scope of its activity;

(C) the period of time necessary for the committee to carry out its purposes;

- (D) the agency or official to whom the committee reports;
 - (E) the agency responsible for providing the necessary support for the committee;
 - (F) a description of the duties for which the committee is responsible, and, if such duties are not solely advisory, a specification of the authority for such functions;
 - (G) the estimated annual operating costs in dollars and man-years for such committee;
 - (H) the estimated number and frequency of committee meetings;
 - (I) the committee's termination date, if less than two years from the date of the committee's establishment; and
 - (J) the date the charter is filed.
- A copy of any such charter shall also be furnished to the Library of Congress.

ADVISORY COMMITTEE PROCEDURES

Sec. 10. (a) (1) Each advisory committee meeting shall be open to the public.

(2) Except when the President determines otherwise for reasons of national security, timely notice of each such meeting shall be published in the Federal Register, and the Director shall prescribe regulations to provide for other types of public notice to insure that all interested persons are notified of such meeting prior thereto.

(3) Interested persons shall be permitted to attend, appear before, or file statements with any advisory committee, subject to such reasonable rules or regulations as the Director may prescribe.

(b) Subject to section 552 of title 5, United States Code, the records, reports, transcripts, minutes, appendices, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each advisory committee shall be available for public inspection and copying at a single location in the offices of the advisory committee or the agency to which the advisory committee reports until the advisory committee ceases to exist.

(c) Detailed minutes of each meeting of each advisory committee shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the advisory committee. The accuracy of all minutes shall be certified to by the chairman of the advisory committee.

(d) Subsections (a)(1) and (a)(3) of this section shall not apply to any advisory committee meeting which the President, or the head of the agency to which the advisory committee reports, determines is concerned with matters listed in section 552(b) of title 5, United States Code. Any such determination shall be in writing and shall contain the reasons for such determination. If such a determination is made, the advisory committee shall issue a report at least annually setting forth a summary of its activities and such related matters as would be informative to the public consistent with the policy of section 552(b) of title 5, United States Code.

(e) There shall be designated an officer or employee of the Federal Government to chair or attend each meeting of each advisory committee. The officer or employee so designated is authorized, whenever he determines it to be in the public interest, to adjourn any such meeting. No

advisory committee shall conduct any meeting in the absence of that officer or employee.

(f) Advisory committees shall not hold any meetings except at the call of, or with the advance approval of, a designated officer or employee of the Federal Government, and in the case of advisory committees (other than Presidential advisory committees), with an agenda approved by such officer or employee.

AVAILABILITY OF TRANSCRIPTS

SEC. 11. (a) Except where prohibited by contractual agreements entered into prior to the effective date of this Act, agencies and advisory committees shall make available to any person, at actual cost of duplication, copies of transcripts of agency proceedings or advisory committee meetings.

(b) As used in this section "agency proceeding" means any proceeding as defined in section 551(12) of title 5, United States Code.

FISCAL AND ADMINISTRATIVE PROVISIONS

SEC. 12. (a) Each agency shall keep records as will fully disclose the disposition of any funds which may be at the disposal of its advisory committees and the nature and extent of their activities. The General Services Administration, or such other agency as the President may designate, shall maintain financial records with respect to Presidential advisory committees. The Comptroller General of the United States, or any of his authorized representatives, shall have access, for the purpose of audit and examination, to any such records.

(b) Each agency shall be responsible for providing support services for each advisory committee established by or reporting to it unless the establishing authority provides otherwise. Where any such advisory committee reports to more than one agency, only one agency shall be responsible for support services at any one time. In the case of Presidential advisory committees, such services may be provided by the General Services Administration.

RESPONSIBILITIES OF LIBRARY OF CONGRESS

SEC. 13. Subject to section 552 of title 5, United States Code, the Director shall provide for the filing with the Library of Congress of at least eight copies of each report made by every advisory committee and, where appropriate, background papers prepared by consultants. The Librarian of Congress shall establish a depository for such reports and papers where they shall be available to public inspection and use.

TERMINATION OF ADVISORY COMMITTEES

SEC. 14. (a)(1) Each advisory committee which is in existence on the effective date of this Act shall terminate not later than the expiration of the two-year period following such effective date unless—

(A) in the case of an advisory committee established by the President or an officer of the Federal Government, such advisory committee is renewed by the President or that officer by appropriate action prior to the expiration of such two-year period; or

(B) in the case of an advisory committee established by an Act of Congress, its duration is otherwise provided for by law.

(2) Each advisory committee established after such effective date shall

terminate not later than the expiration of the two-year period beginning on the date of its establishment unless—

(A) in the case of an advisory committee established by the President or an officer of the Federal Government such advisory committee is renewed by the President or such officer by appropriate action prior to the end of such period; or

(B) in the case of an advisory committee established by an Act of Congress, its duration is otherwise provided for by law.

(b)(1) Upon the renewal of any advisory committee, such advisory committee shall file a charter in accordance with section 9(c).

(2) Any advisory committee established by an Act of Congress shall file a charter in accordance with such section upon the expiration of each successive two-year period following the date of enactment of the Act establishing such advisory committee.

(3) No advisory committee required under this subsection to file a charter shall take any action (other than preparation and filing of such charter) prior to the date on which such charter is filed.

(c) Any advisory committee which is renewed by the President or any officer of the Federal Government may be continued only for successive two-year periods by appropriate action taken by the President or such officer prior to the date on which such advisory committee would otherwise terminate.

EFFECTIVE DATE

SEC. 15. Except as provided in section 7(b), this Act shall become effective upon the expiration of ninety days following the date of enactment.

And the Senate agree to the same.

CHET HOLIFIELD,
JOHN S. MONAGAN,
DANTE B. FASCELL,
SAM STEIGER,
GARRY BROWN,

Managers on the Part of the House.

EDMUND S. MUSKIE,
HUBERT H. HUMPHREY,
LAWTON CHILES,
LEE METCALF,
CHARLES PERCY,
W. V. ROTH, Jr.,
BILL BROCK,

Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4383) to authorize the establishment of a system governing the creation and operation of advisory committees in the executive branch of the Federal Government, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

1. SHORT TITLE

The Senate amendment changed the short title of the House bill to the "Federal Advisory Committee Act". The conference substitute conforms to the Senate amendment.

2. FINDINGS AND PURPOSES

The Senate amendment contained a more lengthy statement of findings and purposes than did the House bill, but did not differ substantially from the House bill. The conference substitute adopts a compromise between the two provisions.

3. DEFINITIONS

The Senate amendment contained definitions of "agency advisory committee", "Presidential advisory committee", and "advisory committee", while the House bill contained definitions of "advisory committee" and "Presidential advisory committee".

The conference substitute adopts the House definition of "Presidential advisory committee" without any change and adopts the House definition of "advisory committee" with modification.

The conference substitute definition of "advisory committee" includes committees which are established or utilized by the President or by one or more agencies or officers of the Federal Government. The conference substitute excludes from the definition of "advisory committee" the Advisory Commission on Intergovernmental Relations, the Commission on Government Procurement, and any committee which is composed wholly of full-time officers or employees of the Federal Government.

The conference substitute deletes the Senate amendment definitions of "officer" and "employee".

4. APPLICABILITY OF THE PROVISIONS OF THE ACT

The Senate amendment contained a provision setting forth the applicability of provisions of the Act, while the House bill contained

no comparable provision. The conference substitute adopts the language of the Senate amendment with modifications. The conference substitute specifically exempts from the applicability of the provisions of the Act any advisory committee established or utilized by the Central Intelligence Agency or by the Federal Reserve System.

The Act does not apply to persons or organizations which have contractual relationships with Federal agencies nor to advisory committees not directly established by or for such agencies.

5. RESPONSIBILITIES OF CONGRESSIONAL COMMITTEES

The Senate amendment and the House bill contained minor differences regarding the legislative review functions of the standing committees of Congress. The conference substitute adopts the language of the Senate amendment.

The Senate amendment and the House bill differed regarding the duties of the standing committees of Congress when considering legislation establishing advisory committees. The conference substitute adopts the House bill with minor modifications.

The House bill provides that when the President, any agency head, or any other Federal official establishes an advisory committee, he shall follow the guidelines which are set forth in the House bill for standing committees of the Congress when they are considering legislation establishing advisory committees. The Senate amendment contained no comparable provision. The conference substitute adopts the House bill.

6. RESPONSIBILITIES OF THE PRESIDENT

The Senate amendment and the House bill differed with respect to the responsibilities of the President. The conference substitute adopts a compromise provision which provides that the President may delegate responsibility for evaluating and taking action with respect to the public recommendations of Presidential advisory committees. The conference substitute further provides that the President or his delegate shall submit a report to Congress stating his proposals for action or his reasons for inaction with respect to such public recommendations.

The House bill required the President to make an annual report to Congress regarding advisory committees. The Senate amendment required the Director of the Office of Management and Budget to make a similar annual report. The conference substitute adopts the House bill with modifications. The modifications include the adoption of a provision similar to a provision contained in the Senate amendment excluding from such annual report information which should be withheld for reasons of national security.

7. RESPONSIBILITIES OF THE DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET

The Senate amendment contained several differences from the House bill with respect to the responsibilities of the Director of the Office of Management and Budget.

As noted above, the Senate amendment required the Director to make an annual report to Congress on advisory committees. The

conference substitute provides that the President shall make such annual reports, as did the House bill.

With respect to the other duties of the Director, the conference substitute adopts the language of the Senate amendment with slight modification.

The conference substitute requires the Director to include in budget recommendations a summary of amounts necessary for the expenses of advisory committees.

8. RESPONSIBILITIES OF AGENCY HEADS

The Senate amendment differed from the House bill in that it provided that each agency head should designate an Advisory Committee Management Officer with specified duties, and the House bill contained no comparable provision. The conference substitute adopts the Senate amendment with slight modifications.

9. ESTABLISHMENT AND PURPOSE OF ADVISORY COMMITTEES

The Senate amendment set forth a procedure to be followed when advisory committees are established and provided that advisory committees be utilized solely for advisory functions. The House bill had no comparable provision. The conference substitute adopts the Senate amendment with modifications.

10. ADVISORY COMMITTEE PROCEDURES

With regard to the availability of the records and other papers of advisory committees and public access to their meetings, the Senate amendment differed from the House bill. The conference substitute provides for publication in the Federal Register of timely notice of advisory committee meetings, except where the President determines otherwise for reasons of national security. The conference substitute further provides for public access to advisory committee meetings subject to restrictions which may be imposed by the President or the head of any agency to which an advisory committee reports. Such restrictions may be imposed after it is determined that an advisory committee meeting is concerned with matters listed in section 552(b) of title 5, United States Code. The conference substitute also provides that subject to section 552 of title 5, United States Code, the records and other papers of advisory committees shall be available for public inspection and copying.

The conference substitute requires that each advisory committee keep detailed minutes of its meetings.

The conference substitute requires that a designated officer or employee of the Government attend each advisory committee meeting. No such meeting may be conducted in his absence or without his approval. Except in the case of Presidential advisory committees the agenda of such meeting must be approved by him.

11. AVAILABILITY OF TRANSCRIPTS

The Senate amendment provided that agencies and advisory committees should make any transcripts of their proceedings or meetings available to the public at actual cost of duplication. The House bill contained no comparable provision. The conference substitute adopts the Senate amendment with modification.

12. COLLECTION OF INFORMATION

The Senate amendment contained a provision relating to procedures followed by the Office of Management and Budget in carrying out its duties under the Federal Reports Act. The House bill contained no such provision.

The conference substitute contains no provision on this subject.

13. FISCAL AND ADMINISTRATIVE PROVISIONS

The Senate amendment and the House bill differ slightly regarding the requirement that records be kept concerning the disposition of funds and the nature and extent of activities of advisory committees. The conference substitute provides that each agency shall keep financial and other records regarding the advisory committees under its jurisdiction and that either the General Services Administration or such agency as the President may designate shall maintain financial records of Presidential advisory committees.

The conference substitute adopts the provision of the Senate amendment concerning support services for advisory committees.

14. RESPONSIBILITIES OF THE LIBRARY OF CONGRESS

The Senate amendment and the House bill differed with respect to the responsibilities of the Library of Congress as a depository of the reports and other materials of advisory committees. The conference substitute adopts the House bill with modifications.

15. TERMINATION OF ADVISORY COMMITTEES

The Senate amendment differed from the House bill in that it provided for the termination of advisory committees created by Act of Congress before the effective date of the bill and further differed in that it provided for the termination of all advisory committees not later than December 31, 1973. The House bill provided for the termination of all advisory committees, other than those created by Act of Congress before the date of enactment of the bill, within two years after the effective date of the bill.

The conference substitute adopts the Senate amendment with modifications. An important modification to the Senate amendment is the substitution of a termination date which occurs two years after the effective date of the bill.

16. EFFECTIVE DATE

The Senate amendment and the House bill differed slightly with respect to effective date. The conference substitute adopts the Senate amendment with modifications.

CHET HOLIFIELD,
JOHN S. MONAGAN,
DANTE B. FASCELL,
SAM STEIGER,
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Managers on the Part of the House.

EDMUND S. MUSKIE,
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Managers on the Part of the Senate.

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